IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3808 OF 1987

1. Laxman Nagar Co-operative Housing Society Limited, a Society registered under the provisions of the Maharashtra Co-operative Societies Act, having its office at "Sheetal Chhaya", Vazira Naka, L.T. Marg, Borivli (West), Bombay-400 092.

2. R.P. Shirambekar, of Bombay Indian Inhabitant, residing at "Sheetal Chhaya", Vazira Naka, L.T. Marg, Borivli (West), Bombay-400 092, the Chairman of the Petitioner No.1-Society.
.... Petitioners

\- Versus -

1. State of Maharashtra

2. The Special Land Acquisition Officer (7), Bombay and Bombay Suburban District having his office at 2nd floor, Shri Chhatrapati Shivaji Market Building, Paltan Road, Bombay-400 001.

3. Municipal Corporation of Greater Bombay, a statutory Corporation constituted under the provisions of the Bombay Municipal Corporation Act, 1888, having its office at Mahapalika Marg, Bombay-400 001.

4. Bombay Electric Supply and Transport Undertaking, an authority of the Bombay Municipal Corporation - Respondent No.3 herein, having office at BEST Bhuvan, BEST Marg, Bombay-400 039.
.... Respondents

Shri Milind Sathe i/b M/s. Ghanekar & Co. for the Petitioners.

Ms Mugdha Jadhav, Asst. Government Pleader, for the Respondent Nos.1 and 2.

Shri Vinod Mahadik for the Respondent No.3.

CORAM: R.M.S. KHANDEPARKAR & V.M. KANADE, JJ.

DATED: AUGUST 22, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Perused the records. The petitioners by the present petition challenge the award dated 23-9-1986 and the supplementary award dated 20-11-1986 so far as they relate to the petitioners' plot bearing survey No.15/2 (Part), CTS No.94 (Part) and the reconstituted plot No.409 on various grounds and therefore seek to quash the said awards to that extent.

2. Few facts relevant for the decision are that the petitioner No.1 is a co-operative housing society registered under the Maharashtra Co-operative Housing Societies Act, 1960. The members of the petitioner-society are the employees of a nationalised bank, namely the Bank of Maharashtra. Under the development plan issued in terms of the Bombay Regional Town Planning Act, 1954 in the year 1964 a plot of land bearing survey No.15, hissa No.2 (Part) and CTS No.94 was reserved for housing purposes. The said plot was purchased by the petitioner-society from the erstwhile

owners thereof under the deed of conveyance dated 8-5-1967. Prior to that, in the course of settlement of the transaction for purchase of the plot, notice inviting objection for such purchase of the plot was published by the petitioners in the newspapers on 11-4-1967. The name of the petitioner-society was duly entered into consequent to the mutation proceedings in the 7 x 12 extract relating to the records of right pertaining to the said plot consequent to the purchase of the said plot. Pursuant to the purchase of the plot, the petitioners applied for permission for construction of the residential building in the said plot and such permission was issued by the Municipal Corporation of the Greater Bombay in 1972. The construction commencement certificate and the IOD were also issued to the petitioner-society in 1972 and were further renewed on 10-4-1974. The necessary certificate for conversion of the user of the land to the non-agricultural purpose was granted to the petitioner-society by the Sub-Divisional Officer under his order dated 14-4-1975. In order to enable to raise the necessary funds for the purpose of construction of the building, the petitioner-society obtained loan from the Bank of Maharashtra and accordingly executed the deed of mortgage on 9-10-1975 in favour of the Bank of Maharashtra in relation to the said plot. On completion of the construction, on 20-11-1976 the occupancy certificate came to be issued to the petitioner-society

in respect of the building constructed in the said plot by the Corporation. Consequent to the grant of such occupancy certificate, the building came to be occupied by the members of the petitioner-society. Meanwhile, on 24-4-1973 the respondent No.4 resolved to have the land from the village Borivli bearing survey No.12 (Part), 15 (Part) and 17 (Part) admeasuring 8700 sq.metres in area to be acquired for the purpose of housing accommodation for the staff of the BEST. The proposal in that regard was submitted by the respondent No.4 to the respondent No.1 for the purpose of acquisition of the said land on 11-9-973. The Government forwarded the said proposal to the Commissioner, Bombay Division on 7-7-1973 and the latter submitted the proposal to the Additional Collector on 19-7-1973 which was then forwarded to the Land Acquisition Officer on 21-7-1973. The measurements of the land with the intervention of the respondent No.4 were carried out in the month of September and November of 1973 and the Notification came to be issued on 2-4-1974 under Section 126(1) of the Maharashtra Regional and Town Planning Act, 1966, hereinafter called as "the said Act" read with Section 6 of the Land Acquisition Act, 1894 notifying certain land for acquisition including the land in question admeasuring 700 sq.metres out of the survey No.15, hissa No.2 (Part) CTS No.94 which culminated in the award passed on 23-9-1986 and further stated to be addendum to the said award on 20-11-1986, thereby acquiring the land in

question.

3. It is also the contention of the petitioners and not disputed by the respondents that the Municipal Corporation by letter dated 2-6-1964 had opined that the housing reservation cannot be released but the land could be developed for co-operative housing and that the Assistant Director, Town Planning had informed the Special Land Acquisition Officer on 23-9-1973 that the land in question was reserved for housing in "R" Ward and the lands fell in the Town Planning Scheme, Borivli III.

4. It is the case of the petitioners that apart from the fact that the declaration under Section 126 of the said Act was issued beyond the period within which it could have been issued in terms of the proviso to sub-section (2) of the said Section, the public purpose which was sought to be attained was already satisfied in view of the utilisation of the land in question for the housing society built by the employees of a public undertaking like the nationalised bank and further that the award dated 20-11-1986 which in fact concludes the acquisition proceedings in terms of Section 11 of the Land Acquisition Act was passed beyond the maximum period prescribed for passing of such award consequent to the issuance of the notice under Section 126(2) of the said Act read with Section 6 of the Land Acquisition

Act. It is also the contention of the petitioners that once the final plot is allotted in terms of the provisions of the said Act and the said plot having not been forming part of the reserved area as such under the approved scheme under the said Act, unless there was reconstitution of the plan in terms of the provisions of the said Act, the land could not have been sought to be acquired for the purposes which can be classified as reserved purposes under the said Act.

5. On the other hand, it is the contention of the respondents that the land has been lawfully acquired by following the procedure under the said Act read with the provisions of the Land Acquisition Act and consequent to the passing of the award the possession of the property was also taken over and was delivered to the respondent No.4 on 7-11-1986. It is their further case that consequent to the acquisition proceedings in accordance with the provisions of law, the property vest in the Government and consequently the possession thereof has been delivered to the respondent No.4 on 7-11-1986 and there is no illegality committed by the respondent in the acquisition proceedings.

6. Upon hearing the learned Advocates for the parties and on perusal of the records, we do not find it necessary to address to all those issues sought to be raised in the matter and suffice to address to only one

issue regarding the failure on the part of the respondents to comply with the mandatory provisions of law relating to the acquisition of the land as also considering the stand taken by the respondents in the reply to the case put forth by the petitioner which apparently discloses total arbitrariness on the part of the respondents as well as the illegality in claiming right to the plot sought to have been acquired without complying with the statutory provisions of the Act.

7. The Section 126(2) of the said Act under which the land is sought to have been acquired provides that the State Government if satisfied that a particular land is needed for the public purpose, it can proceed to make a declaration in that regard in the manner provided in Section 6 of the Land Acquisition Act, 1894 in respect of such land. It further provides that the declaration so published shall, notwithstanding anything contained in the Land Acquisition Act, be deemed to be a declaration duly made under Section 6 of the Land Acquisition Act. The proviso thereto states that subject to the provisions of sub-section (4) of Section 126 of the said Act, no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be. The limitation, which was initially of three years was subsequently amended to one year under the Act No.10 of

1994, however, we are not concerned with the said amendment as the limitation which was in force at the relevant period was of three years. Obviously therefore, any declaration for acquisition of land in exercise of powers under Section 126 of the said Act read with Section 6 of the Land Acquisition Act could have been issued within the period of three years from the date of publication of the draft Regional Plan, Development Plan, or any other Plan or Scheme. It is not in dispute that the development plan was published in the year 1967. It is nobody's case that thereafter any other plan was published prior to the issuance of the Notification under Section 126 (2). Being so, the provision clearly require the acquisition proceedings to be initiated within the period of 3 years from the date of issuance of the plan in the year 1967. It is a matter of record that no such acquisition proceedings were initiated in relation to the plot in question within three years from 1967 and the first Notification in the case in hand was issued only on 2-4-1974. It was obviously beyond the period of three years.

8. The sub-section (4) of Section 126 of the said Act provides that notwithstanding anything contained in the proviso to sub-section (2), if a declaration is not made within the period referred to in sub-section (2), the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894,

in the manner provided by sub-sections (2) and (3) of the Maharashtra Regional and Town Planning Act, 1966, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh. In other words, mere failure on the part of the authority to take steps within three years could not debar the Government from issuing a fresh Notification even after the expiry of the said period, consequent to the provisions under sub-section (4) of the said Act. However, it is nobody's case that any such fresh Notification was issued at any time after the said period.

9. The above factors by themselves perhaps would not have been sufficient to the petitioners to seek interference in writ jurisdiction in the matter. We are fully conscious of the limitations of this Court to interfere in the land acquisition proceedings. However, as rightly submitted on behalf of the petitioners in the facts and circumstances of the case, the records reveal total arbitrariness on the part of the authorities in relation to the land acquisition proceedings, as also the illegal action sought to be taken to get the possession of the land in question and the same clearly justify interference by this Court in writ jurisdiction in the case in hand.

10. The facts which are brought on record reveal that even prior to issuance of the Notification under Section 126(2) of the said Act read with Section 6 of the land Acquisition Act, the Assistant Director, Town Planning had informed the Special Land Acquisition Officer that the land in question was reserved for housing in "R" Ward and the land fell in the Town Planning Scheme, Borivli III. Further it is also not the case of the respondents that they were unaware of the fact that the land in question was allowed to be utilised by the Corporation for the purpose of construction of the residential building for the members of the petitioner-society consequent to the permission granted in the year 1972. It is also not the case of the respondents that they were unaware about the permission granted to the petitioner-society for non-agricultural use of the land by the Sub-Divisional Officer under his order dated 14-4-1975. It is also not the case of the respondents that they were unaware of the finalisation of the Town Planning Scheme as far as the plot in question whereby it was finally allotted to the petitioners being reconstituted plot No.409. It is also not the case of the respondents that they were unaware of the fact that the buildings for residential purposes were already constructed by the petitioner-society and the occupancy certificate in that regard having been granted on 20-11-1976, it was occupied by the members of the petitioner-society. It is pertinent to note that

inspite of all these facts, the respondents claim to have proceeded with the acquisition proceedings on the assumption that the land was a vacant land and that is apparent from the fact that the award which was passed on 23-9-1986 merely refered to the land in question to the extent of 700 sq.metres and the compensation for the land value thereof. It nowhere refered to any structure on the said plot. As already stated above, the petitioner-society had already constructed building and even the occupancy certificate in respect thereof was issued to them in November, 1976 whereas the award was passed in 1986. As far as the valuation in relation to the subject-matter of acquisition in relation to the suit land is concerned, the award reads thus:-

"(a) Land value bearing S.No.15/2 pt.
(CTS No.94 pt) area admeasuring
700 sq.mtrs at the rate of Rs.22/-
per sq.mtrs. belonging to Laxman
Nagar Co-Op.Hsg.Soc. Rs.15,400.00

(b) Crops & Trees Nil

(c) Severance injurious affection
damage Nil

(d) 30% solatium Rs. 4,620.00

(e) Component at 12% per annum of
market value payable from the
date of the notification till
the date of declaration of
award i.e., 4.7.74 to 23.9.86
i.e., 12 Yrs. 2 mths, 20 days Rs.22,585.26

Total: Rs.42,605.26

Say Rs.42,605.00

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11. Undoubtedly, the deficiency in the said award was sought to be made good by issuing a supplementary award on 20-11-1986 which refers to the structure and wire fencing in the said land. The relevant portion of the said supplementary award in that regard reads thus:-

"R) Structures wire fencing etc:-

There is one pucca structure on the land of S.No.15/2pt. on plot No.458 which belongs to Laxman Nagar Co.Op.Housing Society is coming in the alignment of land under acquisition. This structures was not on the site at the time of notification issued by the Commissioner Bombay Division under sub-section (2) & (4) of Section 126 of M.R. & T.P.Act,

read with section 6 of L.A.Act, for filing his claim for compensation. However, he has not filed his claim for compensation for structure or the land."

12. It is pertinent to note that though in the supplementary award there is an observation that the structure in the said land was not in existence at the time of issuance of notice under Section 126, in the award dated 23-9-1986 there was specific reference to the fact that the land belongs to Laxman Nagar Co-operative Housing Society. At the same time, in the supplementary award there is a specific mention about service of notice under Section 9 of the Land Acquisition Act on the owner of the land. There is no specific observation in the supplementary award about the service of such notice on the owner or the occupant of the structure. At the same time the supplementary award also discloses complete knowledge to the acquiring authority that the structure belongs to the Laxman Nagar Co-operative Housing Society. In normal course, perhaps even failure on the part of the acquiring authority to serve notice may not be fatal and on that count the land acquisition proceedings may not stand vitiated. However, in the case in hand, yet another strange thing which has come to light is that the supplementary award is dated 20-11-1986 and it relates to the acquisition of the structure in the land in question. In other words,

it is the contention of the respondents that acquisition of the land along with the structure was complete on 20-11-1986. Inspite thereof, one fails to understand as to how the respondents could make a statement on oath to the effect that the land was acquired and possession thereof was taken on 7-11-1986. While the affidavit filed on behalf of the acquiring body by Sakharam Pandurang Jadhav, Special Land Acquisition Officer, in his affidavit has stated that "The possession of the land in question has been taken from the land owner and handed over to the acquiring body i.e. the respondent No.4 on 7.11.1986 through the surveyor from the office of the Additional District Inspector of Land Records". Likewise, Shri Mahadeo Narayan Rampure, who has filed affidavit on behalf of the respondent No.4 has stated in his affidavit that "The possession of the land in question was taken from the land owner and handed over to the Respondent No.4 on 7th November, 1986". The law on the point as to vesting of land in the Government is well-settled. A land vests in the Government only after the acquisition thereof in accordance with the provisions of law relating to the acquisition of land concluded by proper award being passed and the possession thereof being taken. The Section 16 of the Land Acquisition Act is very clear in that regard. Undisputedly, the provisions of Section 16 of the Land Acquisition Act are applicable to the acquisition of land under the provisions of the said Act in view of the

Section 128(2) thereof. Being so, one fails to understand how the respondent could have claimed to have acquired the possession of the property in question on 7-11-1986 when the acquisition proceedings were not validly and legally concluded on that day. Besides, the possession must be taken in the manner which the subject-matter thereof permits delivery of possession. In case of a structure or a building, unless physical possession thereof is taken, question of vesting of the building in the Government by virtue of the provisions of Section 16 of the said Act would not arise. Undoubtedly, in a given case, under the peculiar facts and circumstances thereof, the acquiring body could establish that except drawing the panchnama of possession, no other act was possible and/or permissible and that therefore the panchnama of possession itself would be conclusive proof of taking over the possession of the acquired property. But that is not the case in hand. In the absence of a proper and lawful award being made in relation to the acquisition of the land in question and the possession being not taken in the manner known to law, all above facts obviously disclose that the proceedings for acquisition of the land in question were not in accordance with the provisions of law, besides, there being arbitrariness on the part of the concerned authorities in the entire proceedings. Therefore, in the facts of the case, the petitioners are justified in submitting that the awards in question to

the extent the same relate to the property of the petitioner admeasuring 700 sq.mtrs. need to be quashed.

13. It is also pertinent to note that the proposed acquisition was essentially for the purpose of construction of the housing accommodation for the staff of BEST. It is also undisputed fact that the land in question has been utilised by the petitioners for the construction of the housing accommodation for the members of the co-operative society and the co-operative society consists of the members who are employees of a nationalised bank. Though the contention of the learned Advocate that the utilisation of the land for co-operative housing society would itself amount to fulfilment of the public purpose in relation to utilisation of the land for housing purposes can not be accepted without being properly substantiated, the fact remains that the land has not been utilised for the purpose other than for housing accommodation. It is also a matter of record that such utilisation was carried out much prior to issuance of the notice under Section 126(2) of the said Act read with Section 6 of the Land Acquisition Act.

14. In the background of the above facts, the petitioners are justified in contending that before proceeding to acquire the land for housing purposes for the staff of BEST, it was necessary for the concerned

authorities to apply their mind as to whether said property could also be included in the proposed acquisition or was required to be excluded therefrom. It is not the case on behalf of the respondents that any such exercise was carried out at any time by the respondents before passing the awards in question. This certainly discloses arbitrariness and non-application of mind to the relevant aspect of the matter in issue by the respondents, as rightly sought to be argued on behalf of the petitioners.

15. In the peculiar facts and circumstances, therefore, we are left with no alternative than to quash the impugned awards only to the extent they relate to the property in question i.e. an area of 700 sq.metres in survey No.15/2 (Part) CTS No.94 (Part) which as the subject-matter at Clause 6 of the award dated 23-9-1986 and the supplementary award dated 20-11-1986. The rule is made absolute accordingly with no order as to costs.

(R.M.S. Khandeparkar, J.)

(V.M. Kanade, J.)